The Solicitors' Journal

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CURRENT TOPICS

The Nuffield Foundation

THE annual report of the Nuffield Foundation for the year ended 31st March, 1951, states, in its introduction, that the foundation—the largest endowed charity of its kind in this country—welcomes the appointment of the Nathan Committee last year "to consider and report on the changes in the law and practice . . . relating to charitable trusts in England and Wales which would be necessary to enable the maximum benefit to the community to be derived from them." As the report points out, endowed charities enjoy fiscal and legal privileges, and it is in the public interest that the uses to which their funds can properly be put should be reviewed, and if necessary reformed. The foundation's report continues: "It would be surprising if the legal definition of charity, dating from the Statute of Elizabeth of 1601, should not by now contain doubts and confusions . . . So it is inevitable after a period of almost unprecedented social change that some statutory re-definition of charity should be sought. Nor is it only the ancient law of charities that may need revision to meet modern needs. Many of the ancient endowed charities . . . are as much in need of modernisation." The report goes on to defend the sphere of charitable action: "Those who look forward to the complete abolition of private charity do so usually on the grounds that public action must increasingly supplant private actions. But this view implies an unrealistic conception of the community as something static, with a finite field of beneficial action within which the State takes over in turn all the activities which once were private and individual. Such arguments are no more realistic than those of the seventeenth century French economist, Colbert, who held that there is a finite amount of world trade, the capture of part of which by one country automatically deprives others of their share. Communities, like trade, change and expand with the revelation and satisfaction of new needs. To this vital process charities have in the past contributed greatly; and in the future they can continue to play a necessary part if modern charity is not hampered by archaic limitations upon proper charitable objects or by a passion for fruitless administrative tidiness." The right of the foundation to be heard in this important matter is indicated by the fact that during the year its new grants totalled £336,194.

Coal-Mining (Subsidence) Act, 1950

NOTES by the Ministry of Local Government and Planning on the practice under the Coal-Mining (Subsidence) Act, 1950, have been circularised to all housing authorities and county councils in England (Circular 42/51). The general effect of the Act is to require the National Coal Board to carry out or pay for the repair of structural damage (evidence of which first appeared on or after 1st January, 1947) due to coal-mining subsidence to dwelling-houses (houses, flats, maisonettes or parts of buildings used as dwellings) having a rateable value of £32 (in Scotland £52) or less. The notes deal with payments made by the National Coal Board in respect of houses within the housing revenue account, and depreciation

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payments in respect of houses which are the subject of an advance under the Small Dwellings Acquisition Acts, 1899–1923, or Housing Acts, 1936–1949, temporary houses, and consultations between the Board and local authorities.

Requisitioned Property

WITH regard to requisitioned property, it is stated in the notes that it is not considered that subsidence damage due to mining operations is damage for which compensation is payable under s. 2 (1) (*b*) of the Compensation (Defence) Act, 1939. Where serious damage occurs to property held under requisition it would be advisable for the local authority to consider releasing the property from requisition, leaving the owner to treat with the National Coal Board. Notice of release should be accompanied by details of the damage and its cause, and the owner's attention should be drawn to s. 12 (2) of the Compensation (Defence) Act, 1939, and to the provisions of the Coal-Mining (Subsidence) Act, 1950. If the council do not propose to release property which has been damaged by mining subsidence, they should immediately advise the owner of the provisions of the Coal-Mining (Subsidence) Act with particular reference to the notices required under s. 5 (1) of that Act, so that he may deal direct with the National Coal Board. The owner should be reminded that the Coal-Mining (Subsidence) (Notices) Regulations, 1950 (S.I. 1271 of 1950), require notice to be given within two months of the occurrence of the damage. The damage should not, of course, be repaired at the cost of the requisitioning account, but, where the owner agrees, there is no objection to the local authority pressing the claim against the National Coal Board on his behalf, if they are willing to do so, or carrying out the repairs on his behalf where the repairs are to be executed by the owner at the expense of the Board.

"Law for Everybody"

IN the seventh of a series of pamphlets prepared by the *News Chronicle* in co-operation with the Council for Education in World Citizenship, Mr. J. P. DERRIMAN explains in everyday language the history of our laws, courts and lawyers, and their composition and functions to-day. The style of the pamphlet is picturesque, and in a chapter headed "Going to Law" the writer gives an admirable description of a lawsuit. Apart from the statement that the county court cannot award so high an amount as a plaintiff claims in a running-down action where the special damages are £573, which implies that the county court can in no circumstances award such damages, the account is both interesting and accurate. Substantially correct also are the observations on the cost of the law. The writer says that it is too early to be sure what effect the legal aid scheme will have on the volume of work in the courts, but that the tendency is towards an increase in divorce work and no great change in other work. Solicitors will find special interest in the chapter on "What is wrong with the law." "Solicitors say," the writer states, "that litigation gives them an inadequate return for the amount of work it involves, compared to the more or less routine conveyancing business, for instance." One wonders how many solicitors would support the implication that conveyancing business is adequately remunerated. The publication, which is admirably designed and illustrated, is published by the *News Chronicle* at the price of 1s.

Standardisation of Laws

A REPORT on the work of the International Chamber of Commerce during the 1949–51 period, issued as a supplement to the June number of *World Trade*, journal of the International Chamber of Commerce, shows in detail the work done by the chamber and is a record of what business men have been able to achieve under the ægis of the chamber, by agreeing to simplify their international transactions. Among matters being discussed at the current congress of the International Chamber at Lisbon, from 11th–16th June, are international commercial arbitration, the standardisation of arbitration law and practice and the rapid enforcement of awards, the work of the court of arbitration of the chamber, the international protection of industrial property and the standardisation of commercial practice, trade terms and contracts.

N.A.L.G.O. in 1950

THE annual report of the National Association of Local Government Officers for 1950, presented to its thirty-fourth annual conference at Blackpool, which opened on 12th June, states that, through its legal department, the Association persuaded the Government to introduce legislation empowering local authorities to make up to civil level the pay of their staffs called up for service in the armed forces as reservists. In addition to this major achievement, the department examined fifty-nine Parliamentary Bills and provisional orders, taking action wherever their provisions appeared likely to prejudice the interests of the association's members, and assisted 1,164 members in personal legal problems arising out of their work. It also joined with other interested bodies in representations to the Government to amend the Pensions (Increase) Acts to mitigate the effect of the rising cost of living on many pensioned officers in the public services. In the past year, the legal department has obtained no less than £10,000 in damages, compensation and similar claims for thirty-one members.

Mr. E. H. Sainsbury

HOME on a flying visit to Cardiff last month, Mr. EDWARD HARDWICKE SAINSBURY, prosecuting solicitor to Cardiff Corporation from 1937 to 1946, and now a senior magistrate in Hong Kong, has completed a task the like of which few lawyers could contemplate with equanimity, the redrafting of the laws of Hong Kong, since published in eleven volumes. He is a nephew of Mr. CHARLES J. HARDWICKE, the President of the Cardiff Incorporated Law Society. His distinguished service in a key outpost of the Commonwealth has shed lustre on himself, the city of Cardiff of which he was an officer, and the profession to which he belongs.

Recent Decisions

In *Thompson* v. *Earthy*, on 8th June (*The Times*, 9th June), ROXBURGH, J., granted an order of possession to the purchaser of a house against the wife of the vendor notwithstanding that the vendor had deserted his wife, and had at the hearing of maintenance proceedings before the justices given an undertaking that he would allow his wife and children to remain in possession of the house which had been their matrimonial home. His lordship held that the wife had no interest, legal or equitable, in the premises, so as to bind them in the hands of a purchaser.

In *Tiger and Another* v. *Barclays Bank, Ltd.*, on 8th June (*The Times*, 9th June), FINNEMORE, J., held that where a bank was named as executor in a will and some years later a probate action was settled on the terms that the bank should renounce probate of the will and the plaintiffs were to apply for letters of administration with the will and codicil annexed and letters of administration were accordingly granted, the bank must deliver up the documents in their possession relating to the estate and were not entitled to impose a condition on the surrender of the documents that they should obtain a formal release and discharge from all liability in respect of the estate.

Costs

LANDS TRIBUNAL AND KINDRED COSTS—III

In our last article we were considering the functions of the Lands Tribunal, set up under the Lands Tribunal Act, 1949, and the various provisions of the Lands Tribunal Rules, 1949, in so far as those rules affected the question of costs.

We will now endeavour to trace the steps to be taken in an appeal or a reference to the Lands Tribunal and the costs involved in those steps. We will assume that a dispute arose as to the compensation payable in respect of land compulsorily acquired, and that the matter went to hearing and a decision of the Lands Tribunal has been given stating the amount of the compensation which it directs shall be paid by the acquiring authority, and that the tribunal directs further that the authority shall pay the costs of the former owner in respect of the reference, such costs, in the absence of agreement, to be taxed by the registrar in accordance with the scale applicable to costs in the High Court.

At the outset, the solicitor for the owners will be confronted with the difficulty of fitting the steps taken in a reference to the Lands Tribunal into the framework of the scale of costs applicable to proceedings in the High Court. However, the difficulty is not insuperable, and indeed, it arises frequently, for example in the case of arbitrations.

A reference to the Lands Tribunal may arise from (*a*) a submission by consent or (*b*) a request by one or other of the parties to the tribunal to settle the dispute. In either case, the solicitor's bill of costs will commence with an item of " Instructions to Act," and the fee allowed will depend on the amount of work involved. In the case of a submission by consent, the parties will normally have negotiated for a settlement of the amount of compensation beforehand, but these negotiations will not, of course, form any part of the proceedings on the reference. Any negotiations between the solicitors for the parties as to whether the dispute shall be submitted to the Lands Tribunal as arbitrator under s. 1 (5) of the Act will, however ,form part of the costs of the reference, and the attendance and correspondence necessary to bring the parties to the stage of consenting to submit the dispute to the Lands Tribunal will be covered by the item of " Instructions to Act." Similarly, where there is no attempt to determine the manner in which the dispute shall be settled, and one party or the other decides to submit the matter to the Lands Tribunal for a decision, then his solicitor's work in attending and corresponding to obtain instructions and for perusing the preliminary correspondence and documents in order to determine whether or not the subject of the dispute is a proper matter to submit to the Lands Tribunal will constitute the items which are included in the fee for " Instructions to Act." The fee allowable will depend entirely on the work actually done, but something between 13s. 4d. and £2 2s. is normally allowed.

Where the reference to the tribunal is by consent, then a charge of 6s. 8d. may be made for drawing and engrossing the form of consent, and attending on the opposite party's solicitor to obtain his signature thereto. The next step to be taken by the claimant is to prepare a form of submission, and to forward such document, together with sufficient copies thereof for service on the other parties to the proceedings, to the registrar (see r. 12 of the Lands Tribunal Rules, 1949).

The notice of submission, which should follow Form 4 in the First Schedule to the Rules, sets out the particulars of the parties, the nature of the question submitted and the compensation claimed, and it must also contain a statement as to whether the party giving the notice intends to call an expert witness. The document is in the nature of a pleading, and a fee of 13s. 4d. may be charged for instructions, whilst the solicitor would be entitled to 1s. per folio for drawing the document. It would be unusual to have this document settled by counsel, since it contains little but statements of fact.

The notice of submission is forwarded to the registrar of the Lands Tribunal, together with copies for service on the other parties to the dispute. A fee of 5s. is chargeable for delivering the notice to the registrar, and 4d. per folio would be allowed for making the necessary copies. We have already noticed that service on the opposite party or parties is effected through the registrar.

In a case where the question is one of disputed compensation on the compulsory acquisition of land and a notice to treat has been served, or a notice of claim has been served on the acquiring authority, then there must be sent to the registrar, with the notice of submission, a copy of the notice to treat and of the notice of claim, and the normal charge of 4d. per folio will be allowed for the copies. These will have been prepared and served prior to the instructions to submit the dispute to the tribunal, so that the solicitor's fees in connection therewith would not form part of the costs of the reference, although a fee for perusing such documents might be allowed later in the reference when the time comes to prepare for the hearing.

When the notice of submission, and the accompanying copy documents, have been delivered to the registrar of the tribunal he will enter the particulars in the Register of References, and will inform the parties of the number of the reference, and this number will thereafter constitute the title of the proceedings (see r. 13).

The next step to be taken by the claimant is to prepare for the hearing. It will depend on the nature of the claim, and the parties involved, what evidence will be required to be adduced, but it is possible that there will be a certain number of documents to be disclosed on each side. Provision is made by r. 33 for the registrar to request any document or other information which the tribunal may require, and to give the adverse party inspection thereof, and to afford him an opportunity of taking copies. Subject to this right of the tribunal to demand production of any particular document which it may require, the parties may consider it expedient to follow the normal practice with regard to discovery and to give each other inspection of their respective documents, and thereafter make up an agreed bundle. The provision of lists of documents to be produced by the respective parties may not be deemed necessary, and in that case the claimants will serve a notice on the opposite party with an appointment at which the respondents' solicitors can inspect the claimants' documents. A fee of 4s. for drawing and serving the notice would be appropriate, whilst the High Court allowance to give inspection or to inspect documents is 6s. 8d. per hour.

When each side has inspected the other's documents, then it might be convenient for an agreed bundle to be made up. A fee of 4s. would again be permissible for the notice of appointment to agree a bundle, together with a fee of 6s. 8d. per hour for attending and agreeing.

The bundle having been agreed, it would be reasonable for the parties mutually to agree that one of them should provide the tribunal with a copy of the agreed bundle, for which the proper charge in the solicitor's bill of costs would be 4d. per folio. Rule 33, however, envisages that each side will respectively supply the tribunal with its own documents, and, unless agreement is reached that an agreed bundle shall

be made up, and a copy thereof is supplied to the tribunal by one party or the other, the original documents being available at the hearing in case the tribunal requires production thereof, then the specific directions of r. 33 will have to be followed.

It may be that during the course of the proceedings the parties will require directions from the tribunal. Thus, they may mutually agree that the date fixed for the hearing is inconvenient, and in that case it would be necessary to apply jointly for a postponement. On the other hand, one party may, in the view of the other party, have been guilty of unjustifiable delay in the conduct of the proceedings, or may have refused to produce for inspection a document which is considered to be of vital importance to a proper determination of the dispute. In any such event it would be necessary to apply to the tribunal for directions.

Rule 22 provides the machinery for this. The registrar will hear and determine interlocutory applications, and any party dissatisfied with the registrar's decision may then apply to the President of the tribunal to review the registrar's order.

Where the application is made with consent, the first step will be to draw and copy the notice of application, for which a charge of 5s. would be appropriate. An attendance on the other side to obtain their consent to the application would entitle the applicant's solicitor to a fee of 6s. 8d., and 5s. might reasonably be charged for lodging the notice and the consent with the registrar. Where the application is not made with consent, then there will, of course, be no attendance on the other side for their consent, but a copy of the application must be served on them. The appropriate fee for making a copy of the notice of application and serving it on the adverse solicitors is 3s. 6d.

In the case of consent applications the registrar would, no doubt, make an order without hearing the parties, unless he required some information which was not disclosed in the notice. If, on the other hand, the application is contested, then the registrar would probably desire to hear the parties, and the appropriate fee for such an attendance would be 6s. 8d. or such higher fee as the registrar considers just, according to the time occupied and the complexity of the point involved.

The registrar's decision is communicated to the parties in writing, and if either party objects to it then he must give notice to the registrar within four days after *receiving* notice of the decision. For an attendance before the President on a review of the registrar's decision a fee of 13s. 4d. to £1 1s. would be proper.

J. L. R. R.

A Conveyancer's Diary

A MONEYLENDER'S RIGHTS UNDER A MORTGAGE

THE dismissal of the appeal in *C. & M. Matthews, Ltd.* v. *Marsden Building Society* (see p. 366, *ante*) marks another stage in an attempt—so far unsuccessful—to circumvent certain provisions of the Moneylenders Act, 1927, by praying in aid the law of mortgages. In 1933 a borrower mortgaged a house to the defendant society to secure an advance and agreed to make repayments of the principal with the interest thereon by instalments. In 1940 he borrowed the sum of £40 from the plaintiffs (who were registered moneylenders) and gave a promissory note for this amount with interest at 82½ per cent., and as security for the loan gave the plaintiffs a legal charge on the house. The borrower died in 1940, and no further payments were made after his death in respect of either of the loans, which had then been only partly discharged. In 1949 the defendants decided to sell the premises under their power of sale as mortgagees, and having obtained leave to exercise this remedy under the Courts (Emergency Powers) Act, 1943, they duly sold. After discharging the amount due to them under the first mortgage, they had a sum of £412 left in their hands as surplus proceeds of sale, and this sum the plaintiffs claimed as second mortgagees. On the defendants' refusal to pay this sum over, the plaintiffs took out a summons asking for the enforcement of the statutory trust declared by s. 105 of the Law of Property Act, 1925, concerning the surplus proceeds of sale. The defendants, who in the absence of a representative before the court were ordered to represent the borrower's estate, relied upon s. 13 of the Moneylenders Act, 1927, as a complete bar to the plaintiffs' claim.

Section 105 of the Law of Property Act, 1925, provides that the money received by a mortgagee arising from a sale of the mortgaged premises shall be held by him on trust to be applied by him, first, in payment of his costs and charges, and secondly, in discharge of the mortgage money, interest and costs, "and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof." *Prima facie*, therefore, the plaintiffs as puisne incumbrancers were entitled to the surplus proceeds of sale under this provision, since in that capacity they were clearly entitled to the mortgaged property.

Section 13 of the Moneylenders Act, 1927, however, provides that no proceedings shall lie for the recovery by a moneylender of any money lent by him or of any interest in respect thereof, or for the enforcement of any agreement made or security taken in respect of any loan made by him, unless the proceedings are commenced before the expiration of twelve months from the date on which the cause of action accrued. This provision is subject to certain provisos, but in the circumstances of this particular case they were inapplicable.

Harman, J., dismissed the plaintiffs' application (see [1951] Ch. 378). In his judgment the plaintiffs' summons, although in form an application for the execution of the statutory trust affecting the surplus proceeds of sale, was in effect a proceeding by a moneylender for the recovery of money lent by him or for the enforcement of a security taken in respect of a loan made by him, and so barred by s. 13 of the Act of 1927. Further, the learned judge held that, having regard to s. 13, the plaintiffs could not be said to be persons who were entitled to the mortgaged property or authorised to give receipts for the proceeds of sale within the meaning of s. 105 of the Law of Property Act.

In reaching the first of these conclusions the learned judge found it necessary to distinguish the decision in *Re Thomson's Mortgage Trusts* [1920] 1 Ch. 508. In that case, disregarding irrelevances, a second mortgagee was entitled, the question of limitation apart, to the principal money due under the second mortgage and twenty years' interest. The first mortgagee having sold the premises under his power of sale and having in his hands a surplus which would have been sufficient to repay the second mortgagee his principal and all arrears of interest, but insufficient, on that footing, to satisfy subsequent incumbrances, the second mortgagee applied to the court for the determination of the question whether the balance in the first mortgagee's hands was held by the first mortgagee upon trust to pay the second mortgagee, as the

person entitled to give a receipt for the same, the amount due for principal, interest and costs under the second mortgage on the footing that such interest should be computed to cover the full period of twenty years, or on any other and what footing. On this question the first mortgagee and subsequent incumbrancers objected that the second mortgagee was entitled to no more than his principal and six years' interest, by reason of s. 42 of the Real Property Limitation Act, 1833, which provided that no arrears of (*inter alia*) interest in respect of any money charged upon land should " be recovered by any distress, action, or suit, but within six years after the same respectively shall have become due." Eve, J., held that the surplus proceeds of sale were held by the first mortgagee upon trust for the second mortgagee. In his view the position was that, under the provisions then in force equivalent to s. 105 of the Law of Property Act, 1925, the first mortgagee, as a satisfied prior incumbrancer, had no right to retain the surplus proceeds as against the second mortgagee; the first mortgagee's possession " must be treated as the possession of the person rightfully entitled to have the fund handed to him."

This earlier case is, superficially, strikingly similar to the present case, and counsel for the plaintiff moneylenders urged that the two cases were indistinguishable. But, as both Harman, J., and the Court of Appeal pointed out, in *Re Thomson's Mortgage Trusts* the second mortgagee, on any footing, had something due to him; he was clearly entitled to his principal and to six years' arrears of interest, and the only relevance of the limitation provision upon which the other incumbrancers relied to defeat his claim was in determining the amount of the interest due to him. But in the present case, if the form of proceeding was in effect a proceeding to recover a debt or to enforce a security for a loan within s. 13 of the Act of 1927, there was nothing due to the plaintiffs, in the sense of their having a legally enforceable claim for anything; and the contention based on *Re Thomson's Mortgage Trusts* that possession by the first mortgagee as trustee under the statutory trust was tantamount to possession by the second mortgagee was dismissed in the Court of Appeal on the ground that for this purpose the first mortgagee is only to be regarded as in possession of the surplus on behalf of the second mortgagee on the footing that the second mortgagee is the proper person to receive it. On this view this argument of the plaintiffs amounted to a *circulus inextricabilis*, and took them back to where they started. Was the form of proceeding chosen by them a proceeding within s. 13 of the Act of 1927?

On this question the decision of the Court of Appeal was quite as unequivocal as that in the court below. In their view any proceedings are proceedings within the meaning of s. 13 if they assert a right to payment of the amount secured or to payment of the fund subject to the security and the right is one which can only be asserted by setting up a title under the mortgage; and the application of this test in this case clearly showed that, in order to assert their claim to benefit under the statutory trust, the plaintiffs had to rely on their title under the second mortgage. That was sufficient to make the present proceedings amount to proceedings for the enforcement of a security within the meaning of s. 13 of the Act of 1927.

The circumstances of the present case were, of course, of a very special kind, and although the case is an interesting one for the light which it sheds on the nature of a puisne incumbrancer's rights under s. 105 of the Law of Property Act, 1925, it is not a case which can have any application outside its very limited field. The language of s. 13 of the Act of 1927 is very similar to that of s. 18 of the Limitation Act, 1939 (which deals with actions to recover money secured by a mortgage), but there is no true analogy between cases which arise under these respective provisions if (as happened in *Re Thomson's Mortgage Trusts*, and as will usually happen when a puisne incumbrancer asserts his claim to surplus proceeds of sale in the hands of a prior mortgagee) there is at the date of the proceedings something due, by way of principal or interest or both, to the puisne incumbrancer.

" A B C "

Landlord and Tenant Notebook

STATUTORY TENANT'S ILLEGITIMATE "FAMILY" AGAIN

WHEN the tenant of the dwelling-house claimed in *Perry* v. *Dembowski* (1951), 95 SOL. J. 352 (C.A.), died, her landlord knew that she was a statutory tenant, as he had during her lifetime imposed a statutory increase of rent. There was therefore no need to worry about whether she left a will or not, or to serve notice to quit on the President of the Probate Division of the High Court. The house was occupied by the defendant, who had lived with the deceased as her husband for some years; not so many as had the defendant in *Gammans* v. *Ekins* (1950), 66 T.L.R. (Pt. 1) 1139 (C.A.), and it had been held in that case that the description " member of the tenant's family" (Increase of Rent, etc., Restrictions Act, 1920, s. 12 (1) (*g*)) did not apply to him. So far, then, the plaintiff could feel assured that he was entitled to the possession of the dwelling-house. But the Rent Acts are continually producing new situations and new problems; and it appeared that the couple concerned in *Perry* v. *Dembowski* had a child, who had since his mother's death been absent from the premises for reasons of health. The child was four or five years old, and it might be a nice point whether he was capable of forming an *animus revertendi*. And when delivering judgment in *Gammans* v. *Ekins* Jenkins, L.J., had said (see 94 SOL. J. 418) " To say of two people masquerading as these two were as husband and wife (there being no children to complicate the picture) that they were members of the same family, seems to me an abuse of the English language."

The words in parentheses became all-important in *Perry* v. *Dembowski*, of course, and by way of further complication which might serve his purpose the defendant proclaimed his intention of adopting the child legally and pleaded that the child was statutory tenant of the house while he, the defendant, was under a duty to occupy the house and look after the child when he could be brought back.

His contention was rejected, both by the county court and by the Court of Appeal; but the plaintiff did not have so smooth a passage as was possibly expected. It was not, said Somervell, L.J., because the defendant had done nothing in the way of legal adoption or guardianship (presumably his lordship had the Guardianship of Infants legislation in mind) that his case was indistinguishable from *Gammans* v. *Ekins*. It was because the position had to be examined as it was at the time of the tenant's death. The authorities (possibly among them were some referred to in the " Notebook " of 26th July, 1947, 91 SOL. J. 406: " Statutory Tenant's Illegitimate ' Family ' ") showed that the law had recognised *de facto* adoption by a father of his illegitimate child, involving

responsibility for maintenance or proper notice of intention no longer to maintain. But in the case before the court the "fragmentary" evidence did not warrant finding that the defendant had taken any actual step to make his relationship to the child permanent.

So it appears that a bar sinister will not necessarily be a bar to a statutory tenancy created on the death of a statutory tenancy. This, I may say, was suggested in the above-mentioned "Notebook" of 26th July, 1947. But there is another possible obstacle which was touched upon in that article and in *Perry* v. *Dembowski:* can a minor be a statutory tenant? The article mentioned a county court judgment, *Turnbull* v. *O'Brien* [1945] L.J.N.C.C.R. 12, in which the judge (who decided the case on another point) appears to have assumed that infancy was not a disqualification, the elder of the two illegitimate candidates in the matter before him being thirteen years old. In the recent case, Somervell, L.J., dealing with a suggestion that the statutory tenancy might devolve through the child itself, said that he would not go into the question what the position would be if there were minor children represented by a guardian *ad litem*. Which provokes the thought that, though the plaintiff recovered possession from the defendant, the position of the tenant's son may not be altogether disposed of; and it is possible that more will be heard of it, when the question of disability of infants would have to be gone into.

The considerations appear to be these. On the one hand, we have this legislation designed to protect people in their homes (see *Skinner* v. *Geary* [1931] 2 K.B. 546); the provision in s. 12 (1) (*g*)—such member of the tenant's family, etc.—draws no distinction between members who are, and members who are not, of age; and a so-called statutory tenancy (Scrutton, L.J., for one, deplored the coining of the expression: see, for instance, *Keeves* v. *Dean* (1924), 93 L.J.K.B. 203 (C.A.)) is not an estate (*Carter* v. *S.U. Carburetter Co.* [1942] 2 K.B. 288 (C.A.)). On the other hand, it has many of the characteristics of a tenancy: the so-called statutory tenant can sue for trespass (see *Keeves* v. *Dean*, *supra*). Consequently, though there be no "grant," can the infant member of the deceased statutory tenant's family be in a better position than an infant to whom, in the face of the Law of Property Act, 1925, s. 1 (6) ["a legal estate is not capable of . . . being held by an infant"], such an estate has been conveyed, the effect being provided for by *ibid.* s. 19 (1), namely, that that conveyance shall have such operation as is provided for in the Settled Land Act, 1925? Turning to the latter, we find the operation in question to be that of "an agreement for valuable consideration to execute a settlement by means of a principal vesting deed and a trust instrument in favour of the infant, and in the meantime to hold the land in trust for the infant." Now the landlord of a statutory tenant might be considered one who is deemed to have made a grant; nevertheless, one could not only appreciate his feelings if he declined to execute the deed and instrument and refused to hold the dwelling-house in trust, but could also conclude, quite dispassionately, that this was beyond anything provided or contemplated by the legislation. But the result is that, not being disabled by the Law of Property Act, 1925, s. 1 (6), there seems no reason why the infant cannot qualify as a member of the deceased's family, enforcing his rights with the assistance of guardians *ad litem* and otherwise. It may be that we shall some day find a statutory tenant beating what I have so far always considered the record for a contractual tenancy, that referred to in Shakespeare's "King Lear," act IV, scene i: "I have been your tenant, and your father's tenant, These fourscore years." R. B.

HERE AND THERE

"FIELD LAWYERS" NOW

A "SEA LAWYER," the nearest dictionary to hand informs me, is "a seaman who possesses or fancies that he possesses a knowledge of marine law and is probably therefore difficult to govern." Why this accomplishment or hallucination (as the case may be) should be commoner in the maritime profession than in other callings it is somewhat difficult to guess. "The Ruler of the Queen's Navee" had, of course, like so many of his colleagues in successive administrations, a legal qualification, but he is rather *sui generis* among the sons of watery Neptune. Seamen perhaps may have been regarded as enjoying unusual facilities for acquiring first-hand experience of courts of summary jurisdiction at home or abroad or maybe the litigious aftermath of all those perils of the sea and other hazards so picturesquely enumerated in policies of marine insurance produced a recognisable class of ex-witnesses in Admiralty causes permanently infected with the virus of legal disputation and ever afterwards, through the long blue days at sea, meditating points of law and practice for the discomfiture of the owners, the master and the officers. Well, if we (respectfully adopting the view of Lord Goddard) are not much mistaken, the sea lawyer is very shortly going to have a statutory colleague, or "field lawyer," called into being by the collective wisdom of the Legislature and the operation of the Courts Martial Appeals Bill.

INTER ARMA CLAMANT LEGES

AFTER the late hostilities the criminal proceedings undertaken with such generous and simple enthusiasm against divers more or less prominent members of the armed forces of our former enemies, for countenancing or executing this or that act of violence, had not got very far under way before it became apparent that henceforth it would hardly be safe for any officer to take the field in war unescorted by a legal adviser well skilled in the finer points of military and international law. Commanders in our own military establishments were quick to note in the public Press this rather startling innovation in the art of war. The new Bill carries the process a step further and it seems by no means unlikely that a time may come when it will be a few appropriate volumes of Halsbury's Laws of England that the up-to-date soldier will carry in his knapsack. Nobody in the legal profession will complain—except, of course, the judges, for whom the Lord Chief Justice spoke up in the House of Peers on the Second Reading of the Bill. The appeals to the Court of Criminal Appeal will make a nice little extra for the Bar and the solicitors. The law publishers, as Lord Goddard hinted, will race one another to bring out a comprehensive series of court martial appeals which in the intervals of attention to the mere mechanics of his calling, such as training, fighting and filling up forms, every prudent officer who wants to know the answers will be wise to master. When that not entirely unknown phenomenon the "barrack-room lawyer" can fortify his prepared position with a subscription to a current series of reports, it will take more than a common form charge to blow him out of it.

WHAT SEQUEL?

LORD GODDARD, while feeling that a civilian tribunal was inappropriate for dealing with military offences, was of opinion that if some court had to do the job it would have been more practical to send these cases to the underworked Judicial Committee, deprived of so many of its former sources of employment, rather than to the overworked Court of Criminal Appeal, already wrestling with the impressive post-war increase of throughput in the crime industry in the matter of

indictable offences. It was, said his lordship, with a great deal of misgiving that he would approach the task imposed by the Bill but none the less the judges would carry out its terms, and none who have experience of the court in ordinary criminal matters under the present Chief can doubt that in military matters, too, it will operate with characteristic dispatch and efficiency. Lord Goddard believed that the demand for the innovation arose in great measure from the false impressions left on the public mind by the somewhat peculiar Press reporting of some much-discussed courts martial recently held abroad. All the outsiders were able to get hold of was the charge, the defence, and no clue at all to the case for the prosecution. Occasionally, while the great warm-hearted public has been lost in indignant commiseration for the injured and deeply wronged accused (and very properly so on the material put before it), a very different tale has been known to filter through to the Temple but has somehow missed the Press. What will be the actual effect of the new right of appeal on the internal arrangements of the army it is hard to say. In peace time, no doubt, something can be done about working it. In war? Can one really organise the hostilities so as to ensure non-stop liaison between our far-flung battle line (wherever that may happen to be) and the Strand, W.C.2 (assuming it is still functioning as the seat of justice in an atomic war)? With a shrewd guess at how things work in practice, one feels it is all too likely that in the circumstances many a leading case in military law would be nipped in the bud by an unfortunate fatal accident to any gentleman adjudged likely to be cast for the chief role.

RICHARD ROE.

BIRTHDAY LEGAL HONOURS

PRIVY COUNCILLOR

The Hon. KENNETH GILMOUR YOUNGER, M.P., called by the Inner Temple, 1932.

BARONET

Alderman DENYS COLQUHOUN FLOWERDEW LOWSON, Lord Mayor of London. Called by the Inner Temple, 1930.

KNIGHTS BACHELOR

OSWALD LAWRENCE BANCROFT, Esq., Chief Justice, Bahamas. Called by the Inner Temple, 1910.

JOHN LIAS CECIL CECIL-WILLIAMS, Esq., Honorary Secretary of the Honourable Society of Cymmrodorion. Admitted 1920.

ALBERT CECIL DAWES, Esq., C.B.E., Legal Adviser, Ministry of Education. Called by the Inner Temple, 1919.

The Hon. ARTHUR FAIR, M.C., Senior Puisne Judge of the Supreme Court, New Zealand.

UKWATTE ACHARIGE JAYASUNDERA, Esq., C.B.E., K.C., Senator, Ceylon. Called by Lincoln's Inn, 1949.

SYDNEY CHARLES THOMAS LITTLEWOOD, Esq., Chairman, Legal Aid Committee of The Law Society. Admitted 1922.

RICHARD SNEDDEN, Esq., C.B.E., General Manager, Shipping Federation and International Shipping Federation. Called by the Middle Temple, 1925.

STAFFORD WILLIAM POWELL FOSTER SUTTON, Esq., C.M.G., O.B.E., Chief Justice designate, Federation of Malaya. Called by Gray's Inn, 1926.

HAROLD HERBERT WILLIAMS, Esq., F.B.A., F.S.A., J.P. Called by the Inner Temple, 1920.

ORDER OF THE BATH

C.B.

W. A. H. DRUITT, Esq., Principal Assistant Solicitor, Department of H.M. Procurator-General and Treasury Solicitor. Admitted 1935.

V. M. R. GOODMAN, Esq., O.B.E., M.C., Reading Clerk and Principal Clerk, Judicial Office, House of Lords.

ORDER OF ST. MICHAEL AND ST. GEORGE

G.C.M.G.

Sir ALEXANDER WILLIAM GEORGE HERDER GRANTHAM, K.C.M.G., Governor and Commander-in-Chief, Hong Kong. Called by the Inner Temple, 1934.

K.C.M.G.

Sir HERBERT RALPH HONE, K.B.E., M.C., T.D., Governor and Commander-in-Chief, North Borneo. Called by the Middle Temple, 1924.

ORDER OF THE BRITISH EMPIRE

K.B.E.

CHARLES CECIL GEORGE CUMINGS, Esq., Legal Secretary, Sudan Government. Called by the Inner Temple, 1927.

Sir JOHN HARRY BARCLAY NIHILL, K.C., M.C., Colonial Legal Service, President of the East African Court of Appeal. Called by the Inner Temple, 1921.

C.B.E.

T. MacD. BAKER, Esq., T.D., D.L., Solicitor to the Metropolitan Police. Admitted 1924.

D. J. PARRY, Esq., Clerk of the County Council and Clerk of the Peace for the County of Glamorgan. Admitted 1921.

J. S. R. D. RAWCLIFFE, Esq., Senior Registrar, H.M. Land Registry. Admitted 1910.

E. H. RICHARDS, Esq., Assistant Solicitor, Ministry of Labour and National Service. Admitted 1920.

R. T. D. STONEHAM, Esq., Chairman, London Retail Milk Distributive Wartime Association. Admitted 1904.

Prof. J. M. WEBSTER, M.D., Ch.B., F.R.C.S., Director, West Midland Forensic Science Laboratory, Birmingham, Home Office.

O.B.E.

S. A. BENKA-COKER, Esq., Crown Counsel, Sierra Leone. Called by the Middle Temple, 1926.

C. S. HARRISON, Esq., Attorney-General of Jersey. Called by the Middle Temple, 1925.

E. B. JENKINS, Esq., Secretary, Newcastle Regional Hospital Board. Admitted 1932.

S. TAYLOR, Esq., Chairman, Lowestoft Local Tribunal, Ministry of National Insurance. Admitted 1902.

H. WHITTAKER, Esq., F.S.A., Chairman, Blackburn Savings Committee. Admitted 1910.

Lt.-Col. ALBERT FREDERICK WILCOX, Chief Constable, Hertfordshire. Called by Gray's Inn, 1941.

M.B.E.

F. G. AXMANN, Esq., Establishment Officer, County Courts Branch, Lord Chancellor's Department.

A. McD. B. RULE, Esq., Principal, City of Birmingham Commercial College. Called by the Middle Temple, 1940.

M. H. SPICER, Esq., Principal Clerk, Taxing Office, Supreme Court of Judicature.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

A Day Unknown

Sir,—Some of your readers may be amused to know that the police in this town recently charged a man with committing larceny "on a day unknown between the 3rd and 5th April, 1951."

CAMBRIAN.

Dudley.

REVIEWS

Oyez Practice Notes, No. 20: Conveyancing Costs. By J. L. R. ROBINSON. 1951. London: The Solicitors' Law Stationery Society, Ltd. 7s. 6d. net.

Oyez Practice Notes, No. 22: Probate and Administration Costs. By J. L. R. ROBINSON. 1951. London: The Solicitors' Law Stationery Society, Ltd. 5s. net.

These costs booklets are planned on similar lines. The greater part of each booklet is devoted to the principles of solicitors' costs which are dealt with in a logical and thoroughly practical manner under the various types of conveyancing and probate matters and are not merely notes on the scales laid down by the Solicitors Remuneration Orders or the relevant Rules of Court. The substance of these booklets has already appeared in THE SOLICITORS' JOURNAL, but the convenience of having them reproduced in connected form is very great and has given the author the opportunity of adding, as appendices, the full texts of the Remuneration Orders and Tables of Fees and Costs, and also precedents of Bills of Costs. In the case of the precedents of Bills on Conveyancing Matters these have been thoughtfully compiled and will be found of very great help in the not inconsiderable number of instances where a sale goes off, or for some other reason the solicitor is entitled to be remunerated "according to the old system as altered by Sched. II." The Probate precedents, while adequate to the subject-matter, do not appear to have received quite the same care and attention as the conveyancing precedents, and on any future reprint (and we are sure there will be many) opportunity for amplification might be taken with benefit to the booklet as a whole.

These booklets will prove of inestimable value in solicitors offices of every size. In the large office the conveyancing and probate departments do not need the mass of detail on litigation costs which make up the larger part of the leading works, such as Scott and Porter's Guide to Costs, and if the appropriate one of these booklets is to be found in each department its cost will be repaid rapidly in the time saved in not having to search for the larger work. In smaller offices the larger costs books will seldom be required if these booklets are handy, and their cost would be earned if they reminded the practitioner of only a single item which might otherwise have been overlooked. After all, costs are the bread and butter of the profession. Too many articled clerks become qualified solicitors without much opportunity of learning about costs—in their training they have time only for the law and none for the "profits." A perusal of these booklets will go a long way towards helping the newly qualified solicitor to ensure that he does not lose his clients by overcharging or himself by undercharging.

BOOKS RECEIVED

Prostitution and the Law. By T. E. JAMES, M.A., B.C.L., Barrister-at-Law, Lecturer in Law, King's College, London University. 1951. pp. ix and (with Index) 160. London: William Heinemann Medical Books, Ltd. 21s. net.

Legal Aid. By E. SACHS, K.C., Recorder of the City of Stoke-on-Trent, with a Foreword by The Rt. Hon. the VISCOUNT JOWITT OF STEVENAGE, Lord High Chancellor of Great Britain. 1951. pp. xxiv and (with Index) 466. London: Eyre and Spottiswoode (Publishers), Ltd. 30s. net.

Prideaux's Precedents in Conveyancing. Twenty-fourth Edition in three volumes. By J. B. RICHARDSON, M.A., LL.B., of the Middle Temple and Lincoln's Inn, Barrister-at-Law. Vol. II, 1951. pp. xc and (with Index) 1168. London: Stevens & Sons, Ltd.; The Solicitors' Law Stationery Society, Ltd. £4 4s. net.

The Estates Gazette Digest of Land and Property Cases, 1950. Edited by C. WILLIAM SKINNER, of Lincoln's Inn, Barrister-at-Law, L.M.T.P.I., A.R.I.C.S. 1951. pp. xi and (with Index) 367. London: The Estates Gazette, Ltd. 32s. 6d. net.

Stone's Justices' Manual, 1951. Eighty-third Edition in two volumes. Edited by JAMES WHITESIDE, Solicitor, Clerk to the Justices for the City and County of the City of Exeter. 1951. pp. cccxxxv and (with Index) 3175. London: Butterworth & Co. (Publishers), Ltd. 72s. 6d. net.

Industrial Negotiation and Arbitration. By M. TURNER-SAMUELS, K.C., M.P., Recorder of Halifax, of the Middle Temple and North-Eastern Circuit, assisted by D. J. TURNER-SAMUELS, of the Middle Temple and South-Eastern Circuit, Barrister-at-Law. 1951. pp. xxxii and (with Index) 532. London: The Solicitors' Law Stationery Society, Ltd. 75s. net.

The English and Welsh Boroughs. By W. BARNARD FARADAY, of Gray's Inn, Barrister-at-Law, Recorder of Barnstaple and Bideford. 1951. pp. v and (with Index) 111. London: The Thames Bank Publishing Co., Ltd. 10s. 6d. net.

Taxation of Solicitors' Costs. Notes of a Talk by Sir DOUGLAS GIBBON, M.C., Chief Master, Supreme Court Taxing Office. 1951. pp. 20. London: The Law Society. 2s. 6d. net.

Some Additional Aspects of Professional Conduct and Etiquette. Three Lectures by T. G. LUND, Esq., C.B.E., Solicitor of the Supreme Court and Secretary of The Law Society. 1951. pp. 179. London: The Law Society.

The Pocket Law Lexicon. Eighth Edition. By A. W. MOTION, M.A., LL.B., of the Inner Temple, Barrister-at-Law. 1951. pp. viii and (with Index) 419. London: Stevens & Sons, Ltd. 17s. 6d. net.

Shipping Law. Second Edition. By LORD CHORLEY, M.A., of the Inner Temple, Barrister-at-Law, formerly Sir Ernest Cassel Professor of Commercial Law in the University of London, and O. C. GILES, LL.M., of Gray's Inn, Barrister-at-Law. 1951. pp. xxvi and (with Index) 364. London: Sir Isaac Pitman & Sons, Ltd. 30s. net.

A Guide to Compulsory Purchase and Compensation. Second Edition. By R. D. STEWART-BROWN, Barrister-at-Law. 1951. pp. xiii and (with Index) 103. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

Magistrates' Courts. Two Lectures by JAMES WHITESIDE, Solicitor of the Supreme Court, Editor of Stone's Justices' Manual, President of the Justices Clerks' Society. 1951. pp. 44. London: The Law Society. 4s. net.

A Practical Epitome of the Death Duties. Second Edition. By D. HARRISON, LL.D., of the Estate Duty Office, London; Consulting Editor for Scots Law, R. A. GRIEVE, B.L., of the Estate Duty Office, Edinburgh. 1951. pp. xx and (with Index) 436. London: Sweet & Maxwell, Ltd. 37s. 6d.

Key to Income Tax 1951/52. Edited by R. STAPLES, Editor of "Taxation." 1951. pp. 223. London: Taxation Publishing Co., Ltd. 7s. 6d. net.

Copyright and Industrial Designs. By A. D. RUSSELL-CLARKE, of the Inner Temple, Barrister-at-Law. 1951. pp. xv and (with Index) 261. London: Sweet & Maxwell, Ltd. 37s. 6d. net.

Every Man's Own Lawyer. Sixty-seventh Edition. By A Barrister. 1951. pp. xvi and (with Index) 966. London: The Technical Press, Ltd. 30s. net.

Income Tax for Everyman. Fifth Edition. By R. A. BUTLER, late of Inland Revenue. 1951. pp. (with Index) 71. Hadleigh, Essex: Tower Bridge Publications, Ltd. 5s. net.

Factory Law. Fifth Edition. By H. SAMUELS, M.A., of the Middle Temple and Northern Circuit, Barrister-at-Law. 1951. pp. xxviii and (with Index) 719. London: Stevens & Sons, Ltd. £3 3s. net.

NOTES OF CASES

COURT OF APPEAL

SALE OF GOODS: ARBITRATION

W. Bruce, Ltd. *v.* Strong

Somervell, Singleton and Denning, L.JJ. 13th April, 1951

Appeals from orders of Parker, J., and Slade, J., in chambers.

The sellers, members of the London Dried Fruit Trade Association, sold two consignments of figs, imported from Greece, to the purchasers. The contract of sale incorporated the rules of the association, by r. 21 of which legal proceedings in respect of a dispute were barred until it had been to arbitration. By r. 21A the right to arbitration was lost if not exercised within two months of arrival of the goods in dispute. The figs passed through a chain of sub-purchasers to a party who sold them to the claimants. The goods proved to be defective. The period of two months under r. 21A having expired, the claimants brought an action against their immediate seller. In that action the original purchasers, brought in as fourth parties, sought in turn to bring in the original sellers as fifth parties. Parker, J., on appeal from a motion, refused those sellers' application under s. 4 of the Arbitration Act, 1950, for an order staying the action; and Slade, J., dismissed an appeal from a master's order, made under s. 25 (4), that the clause in the contract of sale requiring arbitration as a condition precedent to legal proceedings should be treated as of no effect in relation to the dispute in question. The original sellers appealed from both orders.

SOMERVELL, L.J., said that, where there was a chain of contracts, it was the last man, who was landed with the goods, who suffered the immediate damage. If the terms of the contracts were sufficiently similar his claim could be passed up to the original seller. But the question was whether, where there was a contract, as here, between two parties, under which both of them, being members of an association, agreed that disputes between them should be bound by a code worked out by those in the trade, with provisions which had been found to work justice or to work satisfactorily as between members of that trade, and to save money, time and costs, a party was to be deprived of that term in his contract because the person to whom he had sold had sold on to someone who was subject, or submitted, to legal proceedings. As an award was a condition precedent here, on the principle laid down by Phillimore, L.J., in *Smith, etc.* v. *Becker, Gray & Co.* [1916] 2 Ch. 86, that the court never refused to stay an action where it was obvious that the case must go to arbitration, that court clearly should grant a stay. Did it make any difference that the buyer had sold on and the buyer from him had sold on again and legal proceedings had been invoked in respect of the general subject-matter of the claim which the fourth party desired to make against the fifth party? In his (his lordship's) view, without laying down an absolute rule, *prima facie* all those matters were *res inter alios acta* and irrelevant to the consideration of the issue raised as between two parties who had agreed to arbitration. It had been argued for the buyers that s. 4 of the Arbitration Act, 1950, under which the application for a stay had been made, could not apply when the time for the demand for arbitration had run out, because the court could not be satisfied that the applicant was "ready and willing" to arbitrate, as required by that section. That argument would mean that a party could defeat the right of the other party to have a dispute settled by arbitration merely by waiting until the time had elapsed and then issuing his writ. He (his lordship) could not think that that was right. Moreover, in construing s. 4, it was relevant to remember that under s. 27 the court had power to extend the period of time if it were of the opinion that undue hardship would otherwise be caused. The appeals against the orders of Parker, J., and Slade, J., must succeed.

SINGLETON and DENNING, L.JJ., agreed. Appeals allowed.

APPEARANCES: *F. W. Beney*, K.C., and *Gilbert Dare* (*Kimbers, Williams & Co.*) (sellers); *C. R. Havers*, K.C., and *M. Ahern* (*Stannard, Bosanquet & Co.*) (buyers).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COSTS: APPORTIONMENT OF BLAME

McCarthy *v.* Raylton Productions, Ltd., and Another

Evershed, M.R., Lord Radcliffe and Denning, L.J. 4th June, 1951

Appeal from Slade, J.

In an action arising out of a road accident, Slade, J., held the plaintiff solely to blame. The Court of Appeal having come to the conclusion that both the plaintiff and the driver of the defendant company's car had been negligent and that the damage must be apportioned, the plaintiff being held liable for two-thirds and the defendants for one-third, the question was raised whether, as, by virtue of the Law Reform (Contributory Negligence) Act, 1945, damages could be apportioned where both parties had been negligent, the costs also ought not to be apportioned. It was contended for the defendants that, though the practice had formerly been that, if a plaintiff recovered any damages at all, he was given all the costs, and although costs were in the discretion of the court, the discretion ought to be exercised judicially, and the proper practice now was that the costs should be apportioned to the same extent as the damages.

EVERSHED, M.R., said that where a case raised several distinct issues it might be a proper exercise of judicial discretion to apportion costs; but in the present case he was not prepared to depart from the practice that costs followed the event. The plaintiff must accordingly have his costs in that court and below. Order accordingly.

APPEARANCES: *Martin Jukes* (*Ponsford & Devenish*); *Tristram Beresford*, K.C., and *C. J. A. Doughty* (*Wm. Easton and Sons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

MORTGAGE: NOTICE OF REDEMPTION: INTEREST

Barratt *v.* Gough-Thomas (No. 2)

Danckwerts, J. 25th April, 1951

Adjourned summons.

In 1919, the plaintiff granted a mortgage on certain property to a mortgagee who died in 1941; the defendant, a solicitor, was one of the four executors of the mortgagee. The plaintiff gave the defendant notice that he wished to pay off the mortgage on 14th December, 1943, but a dispute arose in connection with the defendant's assertion that he was entitled to a lien on the title deeds to the mortgaged property until certain other moneys which in his allegation the plaintiff owed him were repaid. On 24th March, 1944, the plaintiff began proceedings for redemption, and in January, 1946, the defendant took a transfer of the mortgage from the other executors. On 3rd February, 1948, the master in chambers directed that accounts should be taken in the redemption action, but that it should be certified separately what part of the interest accrued after 14th December, 1943. The court was asked to determine, *inter alia*, whether the defendant was entitled to further interest from and after 14th December, 1943, to the date when the principal sum was paid off.

DANCKWERTS, J., said that in the present case there had been no actual tender, and it was doubtful whether the plaintiff could pay off the mortgage on 14th December, 1943. He might have had to raise the money from a bank or in some other way to do so. True, in his affidavit he had stated that he was ready and willing to pay off on 14th December, 1943, but the correspondence was to some extent inconsistent with that, and there was no evidence that any money was set aside for the purpose and was available for payment off of the mortgage on 14th December, 1943, or during the period after that date. The plaintiff ought, therefore, to be liable to pay interest on the mortgage at the mortgage rate down to the date of repayment of the principal. After all, he had had the benefit of the money, which had to be regarded in the circumstances as the mortgagee's money, at all times during that period; therefore there was nothing inequitable in directing that the interest should be paid to the defendant or the mortgagee.

APPEARANCES: *Neville Gray*, K.C., and *J. A. Brightman* (*Field, Roscoe & Co.*, for *Batten & Whitsed*, Peterborough); *E. M. Winterbotham* (*Rooke & Sons*, for *Gough-Thomas*, Ellesmere, Salop).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHARITY: TOWN AND COUNTRY PLANNING: EXEMPTION FROM DEVELOPMENT CHARGE

The Abbey, Malvern Wells, Ltd. *v.* Ministry of Local Government and Planning

Danckwerts, J. 2nd May, 1951

Adjourned summons.

In 1926, the plaintiff company was formed for the purpose of taking over a girls' school; the shareholders were two sisters

who (with a third sister) had formerly carried on the school, and a brother. In 1933 a trust deed was executed by the founders of the school, a number of trustees and the company; it recited the desire of the founders to establish an educational trust to ensure that the school should be carried on under the guidance of persons interested in the education of girls and provided for the transfer of the shares in the company to the trustees "on trust for the benefit of the school, and all dividends and other moneys derived therefrom shall be dealt with in such a manner as the trustees in their discretion shall think advisable with a view to promoting the educational work and efficiency of the school"; the voting rights were to be exercised as the trustees should consider advisable "for the purpose of promoting the educational work and efficiency of the school," and it was further provided that "if the school should be closed and the previous trusts determined, the shares and property representing them should be held" on trust "to deal with the same in such a manner for the advancement of the education of girls as the trustees in their absolute discretion shall determine." The articles of association of the company were altered in order to bring them in line with the trust deed and although the memorandum and articles empowered the company to make profits and distribute dividends, it was provided in the articles that the affairs of the company should be managed by a council which was to consist of the trustees, that no share qualification was required for a member of the council and that the members of the council should receive no remuneration, except a stated sum for expenses. The Minister decided that land held by the company was not held on charitable trusts within s. 85 (1) of the Town and Country Planning Act, 1947, and that the company, therefore, was not exempt from the payment of development charges.

DANCKWERTS, J., said that to satisfy the subsection the user of the land must be for or in connection with charitable trusts or purposes, and the interest in the land must be held on charitable trusts and for charitable purposes. The user of the land in question was for the purposes of the school, so, if the school were a charitable institution, the subsection would be partially satisfied, and it remained to be determined if the interest in the land was held on charitable trusts or for charitable purposes. It was admitted that the memorandum and articles by themselves, as they permitted profits, did not satisfy the section; however, the company was controlled by the trustees, so that in actual fact the company and its property were regulated by the memorandum, articles and the trust deed. Accordingly, the company could only apply its property and assets for the charitable purposes mentioned in the trust deed, a fact which distinguished the present case from *In re Girls' Public Day School Trust, Ltd.* (*ante*, p. 76), where there was a power to pay dividends, and the shares could be acquired by outsiders; here the trustees and through them the company were restricted to the charitable purposes of the trust deed. Accordingly the property was held upon charitable trusts or for charitable purposes, and fell within the exempting definitions of s. 85.

APPEARANCES: *G. R. Upjohn*, K.C., and *Sir Norman Touche* (*Preston, Lane-Claypon & O'Kelly*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: CONSTRUCTION: "FAMILY": "THINGS"

***In re* Edwardes; Midland Bank Executor and Trustee Co., Ltd. *v.* Paul**

Danckwerts, J. 9th May, 1951

Adjourned summons.

By a will dated 9th March, 1950, the testatrix made certain special bequests and continued "and all remaining things to be shared between family, excluding my sister in Australia, and shared equally." At the death of the testatrix, who was a widow and had no children, there were living: her father, two brothers and a sister, further, the sister in Australia, and, also living in Australia, children of brothers and sisters and children of further relations, altogether fifteen persons.

DANCKWERTS, J., said the the word "family" was extremely flexible; no strong rule could be laid down concerning it (see Hawkins on Wills, 3rd ed., p. 117). As the testatrix was a widow and without children the word could not have the primary meaning of children. He (the learned judge) was, therefore, at liberty to attribute to it such meaning as he could find from the context of the will. It was plain that brothers and sisters must be intended to be included because a sister living in Australia was deliberately excluded; but the gift was to be "shared equally," and it was less plain that the testatrix wished to spread out the gift among fifteen persons. In the context of the will, the testatrix by the word "family" was referring to her near relations—her father, her two brothers, and her sister named as a special legatee, but excluding her sister in Australia. As for the second question, the word "things" had not been used in the strict sense. Although in the layman's sense it referred to furniture and the like and not to things in action, regard had to be had to the position in the will of the final bequest comprising both furniture and the like and amounts out of insurance policies. It seemed improbable that the testatrix would make a will and not dispose of the whole of her estate, and it had to be concluded that the final gift to the family carried the whole of the estate of the testatrix not otherwise disposed of.

APPEARANCES: *C. D. Myles; Burnett-Hall; B. Pinson; S. L. Newcombe; H. E. Francis; G. G. Robb* (*Booth & Blackwell*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

DIVISIONAL COURT

BANKRUPTCY: MONEY ADVANCED FOR THE PURPOSES OF BANKRUPT'S BUSINESS

***In re* Meade; Humber *v.* Palmer**

Romer and Harman, JJ. 28th May, 1951

Appeal from Northampton County Court.

The creditor advanced £7,218 15s. 8d. to M for the purposes of his business of a residential riding-school; the money was used for the purchase of a house, horses and general expenses of the school; in an advertising brochure the creditor and M were described as principals of the riding-school and the creditor admitted that she lived with M as husband and wife. In October, 1950, M, on his own petition, was adjudicated bankrupt. The trustee in bankruptcy rejected the creditor's proof of her debt, and that decision was upheld by the learned county court judge. The creditor appealed to the Divisional Court in Bankruptcy.

ROMER, J., said that *In re Beale* (1876), 4 Ch.D. 246, established the principle that where a person had authorised the employment of his assets in a business, he could not prove in competition with the creditors of the business in respect of the assets so authorised to be employed. In the present case, it seemed to him impossible to regard the creditor as a creditor of the bankrupt in respect of the moneys which she had advanced, and, unless she were such a creditor, she could not prove in competition with people who were. If she were in fact such a creditor, she could have sued the bankrupt for the return of her moneys at any time before his bankruptcy. Her evidence showed how far from reality such a conception would be. The moneys advanced by her were not a loan at all: they represented her contribution to the capital of a business enterprise in which she plainly had an interest herself. She was no more entitled to prove in respect of her contribution, as against the ordinary creditors of the business, than the proprietor was entitled to prove in respect of his.

HARMAN, J., gave judgment to the same effect. Appeal dismissed.

APPEARANCES: *A. W. M. Davies* (*Parker, Thomas & Co.*, for *J. D. Douglas & Douglas*, Northampton); *R. C. Vaughan*, K.C., and *J. G. Le Quesne* (*Wigan & Co.*, for *Phipps & Troup*, Northampton).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

ROAD TRAFFIC: LICENSING: SPECIAL OCCASION

Victoria Motors (Scarborough), Ltd., and Others *v.* Wurzal

Lord Goddard, C.J., Oliver and Cassels, JJ. 19th April, 1951

Case stated by Scarborough justices.

The second defendants, the owners of a holiday camp, arranged with the first defendants, motor coach proprietors, to take departing visitors from the camp to the station on Saturday mornings. The coach proprietors charged the camp proprietors on the basis of ninepence for each seat booked, and the passengers were charged correspondingly. By s. 72 of the Road Traffic Act, 1930, a "stage carriage," into which category, as defined in s. 61, the motor coaches fell, must only be used under a road service licence. By virtue of the proviso to s. 61 (2) a road service

licence is not necessary on a special occasion, which, by virtue of s. 25 of the Road Traffic Act, 1934, is declared to exist if certain conditions there specified are fulfilled. All those conditions were fulfilled in the present case. The justices held that the occasion was not a special one, and convicted the defendants in respect of the use of the coaches in contravention of s. 72 of the Act of 1920.

LORD GODDARD, C.J., said that it was argued for the defendants that s. 25 was definitive, and that if, as was contended, all the conditions laid down by the section were fulfilled, whatever might be the purpose or the occasion of the journey, it became a special occasion for the conveyance of a private party. He did not think that that was the true construction to put on the section. Section 61 (2) of the Act of 1930 and s. 25 of the Act of 1934 must be read together: the occasion must be a special one, but it must also comply with the conditions laid down in s. 25. If a party of friends were collected to go by coach to a football match, that would, no doubt, be a special occasion. But if any one of the conditions were not observed, an offence would be committed if the vehicle was not licensed. It did not follow that because the conditions were observed there was a special occasion if, in fact, the occasion was one of the most general description. To take visitors from a holiday camp or a hotel to a railway station every Saturday seemed to him to be the antithesis of a special occasion: it was a general occasion. He was fortified in his opinion by the judgment of Devlin, J., in *Reynolds* v. *G. H. Austin & Sons, Ltd.*, *ante*, p. 173; [1951] 1 T.L.R. 614. Devlin, J.'s view on that particular point might have been *obiter*, but it clearly showed that in the judge's opinion the construction now being adopted was right. Appeal dismissed.

APPEARANCES: *M. D. Van Oss* (*Jaques & Co.*, for *Whitfield, Bell & Smith, Scarborough*); *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NUISANCE: HOLE IN FORECOURT ADJOINING HIGHWAY

Mumford *v.* Naylor

Pritchard, J. 24th April, 1951

Action.

The defendant owned a shop separated from the public highway by a concrete forecourt. In December, 1949, when it was dark, the plaintiff was walking along the pavement of the highway on the same side as the shops. Having left the pavement and stepped on to the forecourt in order to take a short cut at a road crossing, she caught her foot in a hole in the concrete outside the defendant's shop 18 inches from the pavement, and fell and broke her arm. She claimed damages for nuisance, alternatively, negligence in the breach by the defendant of her duty to the plaintiff as a licensee.

PRITCHARD, J., said that Pollock, C.B., had said in *Hardcastle* v. *South Yorkshire Ry. and River Dun Co.* (1859), 4 H. & N. 67, that it was an old doctrine that a private injury arising from a public nuisance was the subject-matter of an action for damages. The plaintiff had relied on the proposition, taken from that case, that the true test of legal liability was whether the hole here was substantially adjoining the highway. That "true test" had been unaffected by the decision of the House of Lords in *Jacobs* v. *London County Council* [1950] A.C. 361; 94 SOL. J. 318, and Lord Simonds had adopted the definition of nuisance as "any wrongful act or omission upon or near a highway, whereby the public are prevented from freely, safely and conveniently passing along the highway." The principle to be drawn from *Jacobs* v. *London County Council*, *supra*, for the purposes of the present case was that, if the plaintiff were using the highway, she might be entitled to a right of action in nuisance if she were injured by an unlawful impediment of her user, and that that right was not taken away by the fact that the impediment was not on the highway itself, provided that it was "substantially adjoining the highway." Applying that principle, he found that the hole here was of sufficiently offensive a character to amount to a nuisance, and that its position in the forecourt was substantially adjacent to the highway. Had the plaintiff, therefore, been injured while she was using the highway, she would have been entitled to recover damages in nuisance. But at the time of her fall she was not using the highway: she had deliberately departed from it to take a short cut to another road. For that reason alone he had decided that her action in nuisance failed. As regarded her claim in negligence, counsel for the defendant had conceded that the plaintiff was a licensee on the defendant's premises. He (his lordship) was of the opinion that in all the circumstances the hole amounted to a concealed danger of which the defendant was aware and of which the plaintiff had not been warned. It followed that the claim in negligence succeeded. Judgment for the plaintiff for £450.

APPEARANCES: *Glynn Blackledge*, K.C., and *Eric Myers* (*Darracotts*); *Martin Jukes* (*Barlow, Lyde & Gilbert*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

LEGAL AID: DISCLOSURE OF INFORMATION

Whipman *v.* Whipman

Mr. Commissioner Grazebrook, K.C. 5th June, 1951

Application for revocation of a legal-aid certificate.

The husband, respondent to a divorce suit, was in receipt of legal aid. The wife sought to have produced certain documents relating to the husband's application for legal aid with a view to having his legal aid certificate revoked or discharged under reg. 11 (4) of the Legal Aid (General) Regulations, 1950. A representative of The Law Society was served with a subpœna *duces tecum* to produce the file, and a further subpœna was served on the National Assistance Board. The Law Society and the board were represented by counsel, who argued as *amici curiæ*. By reg. 11 (4): "At any time during the hearing of any proceedings to which an assisted person is a party the court may, upon application by or on behalf of any other party to the proceedings or by The Law Society, consider whether the assisted person (*a*) has wilfully failed to comply with any regulation as to the information to be furnished by him; or (*b*) in furnishing any such information has knowingly made a false statement or false representation; and on any such application the court may make an order revoking the certificate or discharging it from such date as may be appropriate . . ." By s. 14 (1) of the Legal Aid and Advice Act, 1949: "No information furnished for the purposes of this part of this Act to The Law Society, or to any committee or person on their behalf, in connection with the case of a person seeking or receiving legal aid or advice shall be disclosed otherwise than (*a*) for the purpose of facilitating the proper performance by any person or body of persons of functions under this part of this Act . . ."

MR. COMMISSIONER GRAZEBROOK said that it was clear from s. 1 (6) of the Act of 1949, which provided that a person should not be given legal aid unless he showed reasonable grounds for being a party to proceedings, that an applicant for a certificate must set out his case in his application, and give the names of his proposed witnesses. It had been argued that, in order to determine an application under reg. 11 (4), the court must have before it the information provided by the applicant for his certificate, and that the court should be included in the word "person" in s. 14 (1) (*a*). He had great difficulty in interpreting "person" as meaning the court or a judge. That was not an ordinary interpretation of the word, and, bearing in mind the interpretation in s. 17 of the Act, he was unable to accede to the proposition. There was, therefore, nothing in s. 14 which took the matter of the information obtained by The Law Society out of the provisions of that section concerning secrecy; and the information obtained by them in the course of the application for a legal aid certificate was under that section prohibited from disclosure. It was clear from s. 4 (6) that the National Assistance Board must consider the husband's means and assets, and be supplied with details of capital and income. By s. 8 the administration of the Act was given to The Law Society, who had to deal with all matters relating to administration. It was also clear from reg. 5 (4) that local committees, who came under the area committees, who were in turn under The Law Society, could in certain circumstances require the board to re-determine the disposable income. Therefore, although the board had in other ways an entirely separate existence, in the present matter they acted as agents of The Law Society and, therefore, came within s. 14, and were within the category of "committee or person" in that section. The information given to the board was, therefore, also prohibited from disclosure. That seemed to accord with the ordinary and natural interpretation of the Act. No party would be willing to disclose the necessary matters if he thought them liable to disclosure and inspection by other persons. The only instance in which the court would be the right tribunal to entertain such a matter would be when it arose during the

hearing and clearly indicated some non-disclosure. Here there had been no evidence during the hearing of any incorrect or false statement, and in those circumstances the jurisdiction conferred by reg. 11 (4) did not arise. Application refused.

APPEARANCES: *Miss M. Morgan Gibbon* (*Alec Woolf and Turk*); *A. E. Holdsworth* (*Gibson & Weldon*, for *A. H. Maxwell Lewis*, Southend); *Cyril Salmon, K.C.*, and *A. L. Figgis* (*T. G. Lund*), for The Law Society; *H. A. P. Fisher* (*The Solicitor, Ministry of National Insurance*), for the National Assistance Board.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

PREVIOUS CONVICTIONS: NEWSPAPER REPORTS

R. *v.* Armstrong

Lord Goddard, C.J., Lynskey and Devlin, JJ. 4th June, 1951

Application for leave to appeal from conviction.

The applicant sought leave to appeal against his conviction of larceny at quarter sessions on the ground that his trial was prejudiced by the publication in newspapers a week before of his previous convictions.

LYNSKEY, J., giving the judgment of the court, said that the convictions were properly disclosed before the justices when the question of bail was discussed, and were reported in various newspapers. It was clear that it was the duty of magistrates to inquire into the antecedents of a person applying for bail. The court was not prepared to lay down that because newspapers, either national or local, reported those proceedings accurately, the court must quash the conviction of a person who, on the evidence at the trial, was clearly guilty. So far as the publication of that information was concerned, that court had no power to control the Press; but it was undesirable that such information should be published. The fact that it had been published in the present case, however, was no ground for that court's inferring that the jury had read it or, if they had, that they might have been biased by it. Application dismissed.

APPEARANCES: *J. C. D. Harington* (*Reid, Sharman & Co.*). The application was unopposed.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time :—

Bournemouth and District Water Bill [H.C.]	[5th June.
Midwives Bill [H.L.]	[5th June.
To consolidate certain enactments relating to midwives.	
Midwives (Scotland) Bill [H.L.]	[5th June.
To consolidate certain enactments relating to midwives in Scotland.	
Nurses (Scotland) Bill [H.L.]	[5th June.
To consolidate certain enactments relating to nurses for the sick for Scotland.	
Rivers (Prevention of Pollution) Bill [H.C.]	[5th June.

Read Second Time :—

Common Informers Bill [H.C.]	[5th June.
Criminal Law Amendment Bill [H.C.]	[7th June.
Pet Animals Bill [H.C.]	[7th June.

Read Third Time :—

Fraudulent Mediums Bill [H.C.]	[5th June.
Leasehold Property (Temporary Provisions) Bill [H.C.]	[7th June.

In Committee :—

New Streets Bill [H.C.]	[7th June.

B. DEBATES

On the report stage of the **Leasehold Property (Temporary Provisions) Bill,** LORD TOVEY said he was advised that the retrospective effect of the Bill in its present form was unlimited. He thought this was wrong for two excellent reasons. First, the longer a tenant had held over, the greater was the consideration which had been shown him by the landlord, and the more deserving therefore was the landlord of being protected by the Bill. Second, neither party had intended that the landlord's considerateness should have legal consequences—but the Bill substituted rigid legal rights and duties for the more elastic conditions of give and take. He therefore proposed to limit the Bill's retrospective effect to the date of publication of the Bill. From that date parties knew that their legal rights were liable to be affected by the granting and acceptance of further consideration.

The LORD CHANCELLOR said he found this suggestion a very odd one. He could not see why we should deny to a man who had held over for three years a benefit which we gave to a man who had held over for only three months. What was desired was to preserve the *status quo* as it would exist at the date on which the Bill came into operation. Since the Bill was introduced on 20th November last there had been plenty of time for a vigilant and determined landlord to assert his rights and to get the tenant out. LORD SIMON said he thought we should avoid, if possible, retrospective legislation which rewarded the persistent trespasser and penalised the indulgent landlord. The amendment was negatived.

LORD LLEWELLIN said the expressed purpose of the Bill was to preserve the *status quo* pending more permanent legislation, but this was just what the Bill did not do. In particular it removed from the leaseholder his present liability to repair. If the House assented to this it was assenting to a large number of houses becoming slum property. He proposed an amendment to leave out the words which changed the obligation for this *status quo* period, but which would also ensure that a landlord could not easily eject a tenant who did not live up to his obligation to repair. He proposed that the provisions of the Leasehold Property (Repairs) Act, 1938, should apply to all properties affected by the Bill, whatever their value and however short the unexpired term. VISCOUNT BUCKMASTER, supporting the amendment, said that the Landlord and Tenant Act, 1927, already gave substantial protection to the tenant, limiting the damages that could be recovered to those repairs necessary to prevent any worsening of the reversion.

The LORD CHANCELLOR said that if as a result of this two years' extension they were going to sow "a crop of lawsuits which came to harvest during the two-year period, then they would have done a great deal of harm." He did not want the two years' extension to be conditional upon the result of a lawsuit. The matter had been considered very carefully and it had been decided that, if the Government were going to interfere in this short, sharp and summary way, the extension must not be illusory and dependent on any strict observance of a repairing covenant.

VISCOUNT SIMON said that not only would the tenant accept the two-year extension when it suited him irrespective of the landlord's interest, but he was to have it at a trumpery rent, and he was to be excused from carrying out any repairs at all. The MARQUIS OF SALISBURY said that the landlord might well be compelled to go in and do the repairs at his own expense because the local authority took the view that the property had got into a "scandalous condition." LORD SILKIN thought that there might be cases where a tenant permitted damage or even wilfully did damage to the premises. He thought that some provision ought to be introduced to protect landlords in such circumstances. On the other hand, as a practising solicitor of many years' standing, it was his experience that, whenever a breach of the covenant was established and the court nevertheless gave relief, it was always on the terms that the tenant paid his own and the landlord's costs. Many tenants could not afford to pay such costs and preferred to surrender their tenancies rather than become involved in litigation. On a division the amendment was agreed to.

LORD TOVEY introduced an amendment to safeguard the rights of the superior landlord against the mesne tenant. This was especially important where it was desired to terminate a mesne tenancy on the grounds of immoral usage of the premises by a sub-tenant. It was desired to make it clear that nothing in the Bill affected the rights of the superior landlord in this respect. The LORD CHANCELLOR said the amendment would defeat the object of the Bill. It would mean that a sub-tenant would not be protected against forfeiture of the tenant's lease. The amendment was withdrawn.

The LORD CHANCELLOR accepted LORD TOVEY'S next amendment designed to ensure that the landlord's right to forfeit

a lease on the grounds of illegal or immoral user of the premises should be preserved, whether the breach of covenant or of agreement had occurred before or after the passing of the Act. An innocent occupier, however, who had taken an assignment of a tenancy from a guilty occupier would remain fully protected. The House also agreed to an amendment proposed by LORD JOWITT giving the High Court and county court power to grant injunctions at the suit of a landlord to prevent tenants from doing anything in respect of which, but for the Act, the landlord would have had an action in damages.

LORD MACDONALD said it had been discovered that a yearly tenancy from midsummer to midsummer ended, if terminated by notice to quit, at the last moment of 23rd June. There was obviously no justification for depriving such tenants of the benefits of Pt. II of the Bill and hence he proposed an amendment, which was agreed to, providing for the inclusion in the Act of tenancies that terminated immediately before the date of its commencement.

The LORD CHANCELLOR next moved an amendment to cl. 11, subs. (4) (*a*) [Time for, and interim effect of, application for new tenancy]. The amendment would allow the tenant to remain in occupation after his tenancy had expired for one month after the matter had been disposed of in the county court, and in the event of the matter going to the Court of Appeal, for one month after its decision. The tenant would meanwhile hold on the same terms and conditions as before unless the county court judge, in giving leave to appeal, directed otherwise. This amendment was agreed to without discussion.

LORD MACDONALD introduced an amendment to cl. 14 [Provisions as to Landlord and Tenant Act, 1927] which LORD SIMON later said was due to the intervention of a professional gentleman, who had kindly attended and had himself pointed out to Lord Simon the defect which the amendment cured. LORD MACDONALD said that under ss. 2 and 4 of the 1927 Act the tenant might, within a specified time and subject to specified conditions, claim compensation for goodwill or improvements. The claim for compensation was defeated if, within two months from its being made, the landlord gave notice to the tenant that he was willing and able to grant, or obtain the grant of, a renewal at such rent and for such term as, failing agreement between the parties, the tribunal under the 1927 Act might consider reasonable. Where the tenancy came to an end by notice to quit, the time limit within which the tenant might claim compensation was one month from the date of service of the notice to quit. Thus it would not be known for certain whether the landlord offered a renewal until three months from the service of the notice to quit. By cl. 11 (1) of the Bill the time for application for a new tenancy under the Bill, where the tenancy ended by notice to quit, was also one month after the giving of the notice to quit. Thus the application under the Bill would have to be made in the notice-to-quit cases before the end of the period within which the landlord could make his counter-offer under the 1927 Act. The purpose of cl. 14 (5) was to prevent renewals under the Bill where the landlord had offered renewal under the 1927 Act; the subsection had, however, been inaccurately drafted, since it provided that no application under the Bill should be made if the landlord had offered renewal under the 1927 Act. The amendment would correct this. [5th June.

On the Committee stage of the **New Streets Bill,** LORD MARLEY moved an amendment, which was agreed to, providing that when security, and not cash, was provided for the making up of a new street, and the security was greater than the cost of making up the road, or there was no cost in making up the road (not because the work cost nothing, but because under the 1875 Act local authorities could compel frontagers to make up the road at their own cost, if they chose to use that power), then, when the security consisted of a charge on property and a new owner was therefore liable, the security should be cancelled. Where, however, some other form of security was involved it had to be assumed that on a sale the new owner had paid additional money in advance to cover the cost of making up the road. Here, said Lord Morley, the fair thing was to repay the whole of the debt to the new owner and to realise the security as against the original owner to the extent that it was necessary to recoup the local authority for the cost of what they had paid to the new owner.

A further amendment moved by Lord Morley and agreed to without debate dealt with the case where the original owner sold off his land in plots of which he retained one or more himself. Where there was some security other than cash or in the form of a charge on the land itself given by the original owner, the purchasers of the plots would have paid extra because of this security. The effect of this amendment was, therefore, that as respects the amount due to the original owner, the security would, for any parts retained by him, be cancelled, and so far as any plots were sold, the security would be realised to the extent necessary to recoup the local authority for the sums paid to the other owners.

Next, LORD LLEWELLIN raised the question of whether local authorities ought not to pay interest on money deposited with them under the Bill. LORD MORLEY thought it would be easier for the local authorities simply to make a book entry, and pay out the interest when the road was made up, but he agreed to discuss the matter with Lord Llewellin. An amendment was made to cl. 6 [Power of majority of frontagers to require adoption of private streets] altering the words "majority, either in number or in value" to "majority of the owners of land having a frontage on . . . or as many of those owners as have between them more than half the aggregate length of all the frontages on both sides of the street."

VISCOUNT BUCKMASTER asked the House to accept an amendment designed to enable the local authority to refrain from making up a road when served with notice by the frontagers to do so, if they were satisfied that, there being no piped water supply or main sewerage, it would be possible to lay or connect the same within a period of ten years from the date of the notice. Whilst he expressed great sympathy for the motives behind the amendment, LORD MORLEY said it would create a dilemma. It would encourage local authorities to put off the providing the sewers and water supply when once they had made up the road, or else it would prevent people getting their roads made up whenever the local authority thought there was a chance that the sewers and pipes might be laid within the ten years. VISCOUNT BUCKMASTER withdrew his amendment.

VISCOUNT BUCKMASTER next moved an amendment under which a local highway authority would not be compellable under the Bill to make up a street unless it was contiguous to a highway already repairable by the inhabitants-at-large. LORD MORLEY said in such cases the local authority could, under the Bill as it stood, exempt such houses from the Bill because the situation did not justify use of the powers under the Bill. He agreed, however, that the matter was a difficult one, and, on the amendment being withdrawn, undertook to discuss the matter with Lord Llewellin and Lord Buckmaster. [7th June.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

National Assistance (Amendment) Bill [H.C.] [6th June.
To amend section forty-seven of the National Assistance Act, 1948.

Telephone Bill [H.C.] [7th June.
To make further provision for enabling the Postmaster-General to regulate the use of means of telephonic communication provided by him and the general conduct of telephonic business carried on under his control and to repeal sections seventeen and eighteen of the Telegraph Act, 1868.

Read Second Time :—

Dee and Clwyd River Board Bill [H.L.] [4th June.
Pier and Harbour Provisional Order (Lymington) Bill [H.C.] [6th June.
Royal Albert Hall Bill [H.L.] [4th June.
Sunderland Corporation Bill [H.L.] [4th June.
Telegraph Bill [H.C.] [4th June.
Walsall Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [6th June.

In Committee :—

Coal Industry Bill [H.C.] [4th June.
Finance Bill [H.C.] [8th June.

B. QUESTIONS

MINING SUBSIDENCE: DAMAGE-FREE LEASES

Mr. NOEL-BAKER stated that the Turner Committee on Mining Subsidence had recommended that existing damage-free leases of farms owned by the National Coal Board should run their course. So far as he was aware the Board had implemented the recommendation that no new damage-free leases should be granted in future. [4th June.

MAGISTRATES (GORE PETTY SESSIONS)

Lieut.-Col. LIPTON asked by what authority Mrs. E. Iwi had been required to give an undertaking not to sit as a magistrate in the Gore Petty Sessional Division of Middlesex for a period of one year, the alternative being her removal from the bench. In reply Sir HARTLEY SHAWCROSS said that a justice of the peace held office during pleasure and the decision to terminate the appointment of a justice lay in the discretion of the Lord Chancellor. This particular matter had first been brought to the Lord Chancellor's attention in November, 1949, owing to unfortunate differences which had arisen between Mrs. Iwi and her fellow justices of the Gore Division. Lord Jowitt had asked Mr. and Mrs. Iwi to come and see him and had gone into the whole matter. After a long interview he had come to the conclusion that Mrs. Iwi was overwrought and that she was firmly under the impression, though he had thought quite wrongly, that she was the victim of some intrigue on the part of the other justices.

The Lord Chancellor had come to the conclusion that it would be greatly in Mrs. Iwi's own interest and in the general interests of the administration of justice in the Gore Division if time were allowed to heal the differences which had arisen. It was in these circumstances that Lord Jowitt had pressed Mrs. Iwi to give him an undertaking to abstain from administering justice for a year, hoping that at the end of that time she might resume her magisterial duties in a happier atmosphere. After considering the matter Mrs. Iwi had given this undertaking.

Lieut.-Col. LIPTON in a supplementary question asked what statutory authority enabled the Lord Chancellor to compel a magistrate to refrain from sitting for a period when he (the Lord Chancellor) had made it clear that he had no cause for removing Mrs. Iwi from the bench. The ATTORNEY-GENERAL said Lord Jowitt had not compelled Mrs. Iwi—he had suggested that she should give an undertaking and, after consideration, she had given it.

In reply to further questions, Sir HARTLEY SHAWCROSS refused to arrange for a public inquiry into the administration of justice in the Gore Division. The Lord Chancellor had carefully considered the allegations made by Mrs. Iwi and had decided that no useful purpose would be served by the holding of an inquiry into the matter. [4th June.

INTESTACY LAWS

The ATTORNEY-GENERAL declined to introduce legislation to vary the present intestacy rules so as to provide increased benefits for the surviving spouse. The Committee appointed by the Lord Chancellor last October to inquire into the law of intestacy was expected to report shortly, and the Government would then consider whether legislation was desirable and what form it should take. [4th June.

RIGHT OF ENTRY (PRIVATE PREMISES)

The ATTORNEY-GENERAL refused to consider the introduction of legislation designed, in view of the recent decision that gas inspectors, under the Gas Act, 1948, had power to force an entry into private premises without a warrant, to remove such powers from all who possessed them. Powers such as those exercised by the gas inspector in the case referred to had existed as part of our statute law since the Gas Works Clauses Act, 1871. [4th June.

LEGAL AID AND ADVICE ACT (OPERATION)

Sir HARTLEY SHAWCROSS stated that 15,219 cases had received assistance under the Legal Aid Act in the period 1st April, 1950, to 31st March, 1951. Under the provisions of s. 10 of the Act, the statement of accounts of the Legal Aid Fund was required to be laid before Parliament by the Comptroller and Auditor-General together with the report on it. The Comptroller and Auditor-General received the account from the Lord Chancellor after its audit by the auditors and with their report. These auditors were now engaged on their audit, and he could not say at present when their and the Comptroller and Auditor-General's examinations would be completed and the account laid before Parliament. Asked by Mr. SYDNEY SILVERMAN whether he was aware of the growing feeling in the legal profession that the amount of assessed contribution was altogether too high, and that the usefulness of the service was being depreciated thereby, the ATTORNEY-GENERAL said that question did not arise out of the question on the order paper. [4th June.

METROPOLITAN MAGISTRATES' COURTS

Asked by Mr. E. L. MALLALIEU whether, in view of the pressure of work in the eight metropolitan magistrates' courts, he would consider the opening of a new court, as a remand court for cases for preliminary hearing with which the courts in which they had been instituted were unable to deal without undue delay. Mr. GEOFFREY DE FREITAS said that the Home Secretary had considered this suggestion in consultation with the Chief Magistrate and was satisfied that it was open to too many practical difficulties. Certain measures, however, were being taken which it was hoped would improve the situation, and the Home Secretary was considering what more could be done to lighten the burden on the metropolitan magistrates' courts and thus enable them to dispose of cases more promptly. [4th June.

RENT RESTRICTION ACTS (TENANCIES)

Mr. DALTON said the question of legislation to clarify s. 12 (1) (*g*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, so as to prevent the landlord gaining possession from the widow or resident relative of a contractual tenant who died intestate by serving notice to quit on the President of the Probate Division of the High Court prior to a grant of letters of administration, would be considered when the Rent Restriction Acts were reviewed, but there was no early prospect of legislation. [4th June.

CHILDREN (ADOPTION)

Major LEGGE-BOURKE asked the Home Secretary whether his attention had been drawn to the anomaly arising from the Adoption Act, 1950, whereby a child might suffer over long periods unless the adopters of the child notified their intention to adopt to the local authority, which they were under no obligation to do unless they were in receipt of reward for the adoption. Mr. CHUTER EDE said that this matter was receiving his attention, but it would not, in his view, be reasonable or practicable to require notification of every case in which a child was placed away from home otherwise than for reward. [7th June.

CONTEMPT OF COURT (IMPRISONMENT)

Mr. CHUTER EDE stated that on 30th April last there were seven persons held *sine die* in prisons in England and Wales for contempt of court. They had been held for 450, 99, 60, 11, 8, 4 and 3 days respectively—an average period of 92 days. The longest period for which a prisoner had been held during the last five years was 652 days. [7th June.

JURY SERVICE (EXEMPTION)

In reply to a request that he should take steps to arrange for men who had been called up as reservists to be excused jury service, on request, for a reasonable period thereafter, Mr. CHUTER EDE said that a reservist who received a summons for jury service and had good reason for not attending might apply to the summoning officer for exemption. The decision rested with the summoning officer or the court and he himself had no authority to issue directions. [7th June.

HOUSING (RENTS)

Mr. GAMMANS asked whether the same protection against increased rents would be given to council tenants as was enjoyed by the tenants of privately owned houses. In reply Mr. LINDGREN said there was no immediate intention of introducing legislation to review the Rent Restriction Acts. [7th June.

STATUTORY INSTRUMENTS

Aliens Order, 1951. (S.I. 1951 No. 966.)

Among the amendments made by this order are an increase from two weeks to two months in the period during which an alien may be absent from his registered place of residence without informing the police at the end of that period. There is also an increase from two to three months in the period during which certain aliens need not register with the police.

Ardrossan Water Order, 1951. (S.I. 1951 No. 975.)

Copper, Lead, and Zinc Distribution Order, 1951. (S.I. 1951 No. 981.)

Corn Returns (Amendment) Regulations, 1951. (S.I. 1951 No. 947.)

Death Duties (Northern Ireland) (Relief Against Double Duty) (Cyprus) Order, 1951. (S.I. 1951 No. 969.)

Death Duties (Relief Against Double Duty) (Cyprus) Order, 1951. (S.I. 1951 No. 970.)

This order applies to Cyprus the provisions of s. 20 of the Finance Act, 1894. By these provisions, where a deceased person was domiciled in Great Britain at death and duty is payable in a dominion or colony on property situated within its territory, the amount of the duty so paid is allowed against the Estate Duty payable in Great Britain on that property.

Exchange Control (Authorised Dealers) (No. 2) Order, 1951. (S.I. 1951 No. 963.)
Exchange Control (Authorised Depositaries) (No. 2) Order, 1951. (S.I. 1951 No. 964.)
Exchange Control (Branches and Residence) Directions, 1951. (S.I. 1951 No. 962.)
Exchange Control (Branches) Revocation Order, 1951. (S.I. 1951 No. 974.)
Exchange Control (Declarations and Evidence) (Amendment) Order, 1951. (S.I. 1951 No. 965.)
Exchange of Securities Rules, 1951. (S.I. 1951 No. 960.)
Feeding Stuffs (Prices) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 961.)
Festival of Britain (Appointment of Ministers) (No. 2) Order, 1951. (S.I. 1951 No. 973.)
Foreign Service Fees Order in Council, 1951. (S.I. 1951 No. 971.)
Furniture (Maximum Prices) (Amendment No. 5) Order, 1951. (S.I. 1951 No. 940.)
Draft **House of Commons** (Redistribution of Seats) (Oldham and Ashton under Lyne) Order, 1951.
Hull and East Yorkshire River Board and Transfer Order, 1951. (S.I. 1951 No. 979.)
Iron and Steel (Financial Years) Regulations, 1951. (S.I. 1951 No. 991.)
Justices of the Peace Act, 1949 (Saving of Borough Quarter Sessions) (No. 2) Order, 1951. (S.I. 1951 No. 1001.)
Draft **Lace Furnishings** Industry (Export Promotion Levy) Order, 1951.
Draft **Lace** Industry (Scientific Research Levy) Order, 1951.
London Cab Order, 1951. (S.I. 1951 No. 956.)
London Traffic (Prescribed Routes) (Revocation) Regulations, 1951. (S.I. 1951 No. 977.)
Merchandise Marks (Imported Goods) Exemption Direction (No. 1), 1951. (S.I. 1951 No. 957.)
Merchandise Marks (Imported Goods) Exemption Direction (No. 2), 1951. (S.I. 1951 No. 958.)
Motor Vehicles (Construction and Use) (Amendment) Regulations, 1951. (S.I. 1951 No. 976.)
Draft **National Health Service** (Scotland) (Superannuation) Amendment Regulations, 1951.
National Insurance and Industrial Injuries (Reciprocal Multilateral Agreement) (France and the Netherlands) Order, 1951. (S.I. 1951 No. 972.)
Non-Ferrous Metals Prices (No. 5) Order, 1951. (S.I. 1951 No. 980.)
Pelts (Maximum Prices) (Amendment) Order, 1951. (S.I. 1951 No. 997.)
Personal Injuries (Civilians) (Amendment) Scheme, 1951. (S.I. 1951 No. 938.)
This scheme makes a number of increases in the allowances payable under the Personal Injuries (Civilians) Scheme, 1949.
Prevention of Damage by Pests (Application to Shipping) Order, 1951. (S.I. 1951 No. 967.)
Retail Bespoke Tailoring Wages Council (Scotland) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 949.)
Retail Bespoke Tailoring Wages Council (Scotland) Wages Regulation (Holidays) Order, 1951. (S.I. 1951 No. 948.)
Retail Food Trades Wages Council (Scotland) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 955.)
Retention of Railway Across Highway (Staffordshire) (No. 1) Order, 1951. (S.I. 1951 No. 950.)
Safeguarding of Industries (Exemption) (No. 6) Order, 1951. (S.I. 1951 No. 946.)
Sea-Fishing Industry (Restriction of Fishing in Northern Waters) Suspension Order, 1951. (S.I. 1951 No. 959.)
Stopping Up of Highways (East Sussex) (No. 1) Order, 1951. (S.I. 1951 No. 951.)
Stopping Up of Highways (Essex) (No. 2) Order, 1951. (S.I. 1951 No. 943.)
Table Jellies (Amendment) Order, 1951. (S.I. 1951 No. 978.)
Wages Councils (Notices) Regulations, 1951. (S.I. 1951 No. 954.)

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. STANLEY JOSEPH FISHER Registrar of Barrow-in-Furness and Ulverston County Court and District Registrar in the District Registry of the High Court of Justice in Barrow-in-Furness as from the 1st June, 1951, in place of Mr. J. F. Hodgson (deceased).

Mr. BERNARD W. LITTLE, formerly assistant solicitor to the West Riding County Council, has been appointed joint coroner for the Halifax county district and borough. This area includes Brighouse, Elland and Cleckheaton. Mr. Little will succeed Mr. G. G. BILLINGTON, who has been appointed coroner for Birmingham.

Mr. F. B. D. MOGER, solicitor, of Taunton, has been appointed a local director of the Eagle Star Insurance Company, Ltd., for Bristol and the West of England.

Personal Notes

Mr. Peter Jarvis, a blind solicitor, of Beeston, Notts, has taken his M.A. degree at Oxford.

Mr. P. J. M. Lyons, solicitor, of Bristol, was married on 26th May to Miss S. E. Welch, of Almondsbury.

Captain J. S. Parker, solicitor, of Wellingborough, has been elected president of Wellingborough Rotary Club.

Miscellaneous

The Prince Arthur Golf Cup Competition, which is organised by the Livery Companies Golfing Society and for which there was this year a record entry of thirty Livery Companies, was won by the Worshipful Company of Solicitors of the City of London. The competition, which takes the form of foursome play against bogey over 36 holes, was held at St. George's Hill Golf Club on Tuesday, 29th May. The Company's team, consisting of P. M. Armitage and J. W. H. Hodgson, F. G. Petch (Captain) and T. G. Bennett, were first with a score of one down, the Grocers' Company being second with a score of six down.

THE GENERAL COUNCIL OF THE BAR

The General Council of the Bar at its first meeting after the election re-appointed the following officers for the year: *Chairman:* Sir Godfrey Russell Vick, K.C.; *Vice-Chairman:* Mr. H. A. H. Christie, K.C.; *Hon. Treasurer:* Mr. G. R. Upjohn, C.B.E., K.C.; and additional members of the Council were appointed under reg. 8 (*a*) as follows: The Right Honourable Sir David Maxwell Fyfe, K.C., M.P.; Mr. J. Millard Tucker, K.C.; Mr. L. F. Heald, K.C., M.P.; Mr. M. P. FitzGerald, K.C.; Miss B. A. Bicknell; Mr. N. G. L. Richards; Mr. C. R. Wannell; and Mr. F. D. Barry.

WIGAN DEVELOPMENT PLAN

The above Development Plan was on the 6th June, 1951, submitted to the Minister of Local Government and Planning for approval. The Development Plan relates to land situate within the County Borough of Wigan. A certified copy of the Development Plan, as submitted for approval, has been deposited for public inspection at the Town Clerk's Office, Municipal Buildings, Library Street, Wigan, and is available for inspection free of charge by all persons interested between the hours of 9 a.m. and 5.30 p.m. (Saturdays—9 a.m. to 12 noon). Any objection or representation with reference to the Development Plan may be sent in writing to the Secretary, Ministry of Local Government and Planning, 23 Savile Row, London, W.1, before the 25th July, 1951, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Council of the County Borough of Wigan and will then be entitled to receive notice of the eventual approval of the Development Plan.

OBITUARY

MR. E. B. BEESLEY

Mr. Eustace Barton Beesley, solicitor, of Ashton-on-Mersey, Cheshire, and Manchester, died on 3rd June, aged 76. He was admitted in 1897.

MR. L. OVERSTONE

Mr. Lloyd Overstone, retired solicitor, who formerly practised in Liverpool, died recently in Somerset, aged 86. He was admitted in 1888.

MR. F. RIDLEY

Mr. Frank Ridley, solicitor, of Blyth, died on 23rd May, aged 64. He was admitted in 1910, was at one time clerk to Rothbury Urban Council, and was Netherlands Vice-Consul in Blyth for 25 years.

MR. F. J. S. WATTS

Mr. Francis John Stewart Watts, retired solicitor, of Dewsbury, died on 30th May. He was admitted in 1908 and retired two years ago to Malvern, Worcestershire.

SOCIETIES

The Annual Meeting of THE SOLICITORS' CLERKS' PENSION FUND was held on Thursday, 31st May, 1951, in the Court Room of The Law Society, 60 Carey Street, London, W.C.2. The chair was occupied by Mr. David L. Pollock. In moving the adoption of the Report and Accounts for 1950, he referred to the steady increase in the membership and to the increasing annual income, which now exceeded £100,000. Of the Fund's investments more than half of the market securities were in dated Government and debenture stocks, and the Fund was in a healthy position. The Chairman referred in kindly terms to Mr. Reed, who had been the Secretary of the Fund since its inception, and who was about to retire, and he also referred to his own retirement, for business reasons, from the Committee, which he regretted. The Meeting adopted the Report and Accounts, passed an Amendment of Rule, and attended to other business. The office of the Fund is 2 Stone Buildings, Lincoln's Inn, W.C.2.

The Annual General Meeting of the SOCIETY OF LOCAL GOVERNMENT BARRISTERS took place in the Council Room of the General Council of the Bar on 28th May, when Mr. Roland J. Roddis (Eastleigh) and Mr. T. T. Thorpe (Potters Bar) were re-elected Chairman and Vice-Chairman respectively. Mr. C. Richard Wannell (Southgate) was re-appointed Secretary.

The report of the Executive Committee for the year ended 30th April, 1951, stated that a feature had been the goodwill shown by the General Council of the Bar towards the Society, as evidenced not only by the appointment in July, 1950, of the Society's nominee as one of the two additional Members of the Council to represent non-practising barristers, but also by the Council's sympathetic understanding of, and efforts to assist in finding solutions to, the problems of Local Government barristers.

It was agreed to recommend members to refrain from making application for advertised posts of clerks of local authorities where the terms and conditions did not conform to the recommendations of the Joint Negotiating Committee relating to town clerks and district council clerks.

Membership of the Society (which is restricted to barristers who are clerks of local authorities or who are employed in clerk's departments of such authorities) had now reached 93 per cent. of possible.

For the information of intending members, the address of the Secretary is "Greenelm," Bramley Road, Southgate, N.14.

CASES REPORTED IN VOL. 95

17th March to 16th June, 1951

For list of cases reported up to and including 10th March, see *ante*, p. 160

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